

§ 1.959-4

26 CFR Ch. I (4-1-01 Edition)

For 1963, A is required to include \$100 of subpart F income in his gross income under section 951(a)(1)(A)(i). He would have been required to include \$50 in his gross income under section 951(a)(1)(B) as M Corporation's increase in earnings invested in United States property, except that section 959(a)(2) and paragraph (c) of § 1.959-1 provide in effect that earnings and profits taxed to A under section 951(a)(1)(A) with respect to M Corporation (whether in the current taxable year or in prior years) may be invested in United States property without again being included in gross income under section 951(a). The \$20 dividend from M Corporation is excluded from A's gross income under section 959(a)(1) and paragraph (b) of § 1.959-1,

since such distribution is allocated under section 959(c)(1) and paragraph (b)(1) of this section to amounts described in section 959(c)(1).

(c) During 1964, M Corporation's earnings and profits (before distributions) are \$300, \$75 of which is attributable to subpart F income. Corporation M has no change in investments in United States property during such year and withdraws \$15 of previously excluded subpart F income from investment in less developed countries. Corporation M makes a cash distribution of \$250 to A during 1964. For purposes of section 959, A's interest in M Corporation's earnings and profits as of December 31, 1964, determined after the distribution of \$250, is classified as follows:

| | | | | |
|--|----|-----|-----|-------|
| Section 959 (c)(1) amounts: | | | | |
| Section 959(c)(1) net amount for 1963 (as determined under paragraph (b) of this example) | | | | \$30 |
| Less: Distribution for 1964 allocated under section 959(c)(1) and paragraph (b)(1) of this section to such amount | | | | 30 |
| Section 959(c)(2) amounts: | | | | |
| Section 959(c)(2) net amount for 1963 (as determined under paragraph (b) of this example) | | | | 50 |
| Plus: Earnings for 1964 attributable to: | | | | |
| Subpart F income for 1964 included in A's gross income under section 951(a)(1)(A)(i) | | | | 75 |
| Previously excluded subpart F income withdrawn in 1964 from investment in less developed countries and included in A's gross income under section 951(a)(1)(A)(ii) | | | | 15 |
| | | | | 140 |
| Less: Distribution for 1964 allocated under section 959(c)(2) and paragraph (b)(2) of this section to such amounts | | | | 140 |
| Section 959(c)(3) amounts: | | | | |
| Section 959(c)(3) net amount for 1963 (as determined under paragraph (b) of this example) | | | | 100 |
| Plus: Section 959(c)(3) net amount for 1964: | | | | |
| Predistribution earnings for 1964 | | | | \$300 |
| Less: | | | | |
| Earnings for 1964 classified as section 959(c)(1) amounts (\$0) and as section 959(c)(2) amounts (\$75+\$15) | | | | \$90 |
| Distributions for 1964 allocated under section 959(c)(3) and paragraph (b)(3) of this section | 80 | 170 | 130 | \$230 |
| A's total interest in M Corporation's earnings and profits | | | | 230 |

For 1964, A is required to include in his gross income under section 951(a)(1)(A)(i) \$75 of subpart F income, and under section 951(a)(1)(A)(ii) \$15 of previously excluded subpart F income withdrawn from investment in less developed countries. Of the \$250 cash distribution, A may exclude \$170 from his gross income under section 959(a)(1) and paragraph (b) of § 1.959-1 and \$80 is includible in his gross income as a dividend.

(d) The source under section 959(c) of the 1964 distribution of \$250 to A is as follows:

| Year | Amount | Allocation of distribution under section 959 |
|------|--------|--|
| 1963 | \$30 | (c)(1). |
| 1964 | 90 | (c)(2). |
| 1963 | 50 | (c)(2). |
| 1964 | 80 | (c)(3). |

| Year | Amount | Allocation of distribution under section 959 |
|------|--------|--|
| | 250 | |

[T.D. 6795, 30 FR 945, Jan. 29, 1965, as amended by T.D. 7334, 39 FR 44211, Dec. 23, 1974; T. D. 7545, 43 FR 19652, May 8, 1978; T.D. 7893, 48 FR 22510, May 19, 1983]

§ 1.959-4 Distributions to United States persons not counting as dividends.

Except as provided in section 960(a)(3) and § 1.960-2, any distribution to a United States person which is excluded from the gross income of such person under section 959(a)(1) and § 1.959-1 shall be treated for purposes of chapter

1 (relating to normal taxes and surtaxes) of subtitle A (relating to income taxes) of the Code as a distribution which is not a dividend. However, see paragraph (b)(1) of § 1.956-1, relating to the dividend limitation on the amount of a controlled foreign corporation's investment of earnings in United States property.

[T.D. 7120, 36 FR 10860, June 4, 1971]

§ 1.960-1 Foreign tax credit with respect to taxes paid on earnings and profits of controlled foreign corporations.

(a) *Scope of regulations under section 960.* This section prescribes rules for determining the foreign income taxes deemed paid under section 960(a)(1) by a domestic corporation which is required under section 951 to include in gross income an amount attributable to a first-, second-, or third-tier corporation's earnings and profits. Section 1.960-2 prescribes rules for applying section 902 to dividends paid by a third-, second-, or first-tier corporation from earnings and profits attributable to an amount which is, or has been, included in gross income under section 951. Section 1.960-3 provides special rules for the application of the gross-up provisions of section 78 where an amount is included in gross income under section 951. Section 1.960-4 prescribes rules for increasing the applicable foreign tax credit limitation under section 904(a) of the domestic corporation for the taxable year in which it receives a distribution of earnings and profits in respect of which it was required under section 951 to include an amount in its gross income for a prior taxable year. Section 1.960-5 prescribes rules for disallowing a deduction for foreign income taxes for such taxable year of receipt where the domestic corporation received the benefits of the foreign tax credit for such previous taxable year of inclusion. Section 1.960-6 provides that the excess of such an increase in the applicable limitation under section 904(a) over the tax liability of the domestic corporation for such taxable year of receipt results in an overpayment of tax. Section 1.960-7 prescribes the effective dates for application of these rules.

(b) *Definitions.* For purposes of section 960 and §§ 1.960-1 through 1.960-7—

(1) *First-tier corporation.* The term "first-tier corporation" means a foreign corporation at least 10 percent of the voting stock of which is owned by the domestic corporation described in paragraph (a) of this section.

(2) *Second-tier corporation.* In the case of amounts included in the gross income of the taxpayer under section 951—

(i) For taxable years beginning before January 1, 1977, the term "second-tier corporation" means a foreign corporation at least 50 percent of the voting stock of which is owned by such first-tier corporation.

(ii) For taxable years beginning after December 31, 1976, the term "second-tier corporation" means a foreign corporation as least 10 percent of the voting stock of which is owned by such first-tier corporation.

(3) *Third-tier corporation.* In the case of amounts included in the gross income of a domestic shareholder under section 951 for taxable years beginning after December 31, 1976, the term "third-tier corporation" means a foreign corporation at least 10 percent of the voting stock of which is owned by such second-tier corporation.

(4) *Immediately lower-tier corporation.* In the case of a first-tier corporation the term "immediately lower-tier corporation" means a second-tier corporation. In the case of a second-tier corporation, the term "immediately lower-tier corporation" means a third-tier corporation. In the case of a third-tier corporation, the term "immediately lower-tier corporation" means a fourth-tier corporation.

(5) *Foreign income taxes.* The term "foreign income taxes" means income, war profits, and excess profits taxes, and taxes included in the term "income, war profits, and excess profits taxes" by reason of section 903, imposed by a foreign country or a possession of the United States.

(c) *Amount of foreign income taxes deemed paid by domestic corporation in respect of earnings and profits of foreign corporation attributable to amount included in income under section 951—*(1) *In general.* For purposes of section 901—